

Please add the following new claim:

4 50. The appliance as recited in claim ¹/₂ wherein said screen comprises a foam screen.

REMARKS

Cancellation and Amendment of Claims

In the Office Action the Examiner indicated that claims 2-5, 10, 15-38 and 42-49 are allowable over the prior art of record. Applicant has canceled claim 5 and all of the remaining claims without prejudice except for dependent claims 7, 11 and 13. Each of these dependent claims 7, 11 and 13 has now been amended to change the dependency to claims that the Examiner has indicated to be allowable over the prior art.

Considering the claim amendments presented in this amendment, Applicants have canceled claims 1, 5, 6, 8, 9, 12, 14 and 39-41 without prejudice.

Allowable claim 2 has been rewritten in independent form to incorporate subject matter from base claim 1 and has been amended to replace the term "locatable" with the term "located" as suggested by the Examiner. Claim 2 was also amended to include the "adapted to" language suggested by the Examiner. Claim 7 was amended to change the dependency of such claim from claim 1 to allowable claim 2. Claim 7 was also amended to include the "adapted to" language suggested by the Examiner. New claim 50 was added as a dependent claim from allowable claim 2 to recite the feature of applicant's invention in which the screen comprises a foam screen.

Allowable claim 4 has been rewritten in independent form to incorporate subject matter from base claim 1. The Examiner made no other objection to claim 4 except for a provisional double patenting rejection.

Allowable claim 10 has been rewritten in independent form to incorporate subject matter of base claim 8 and intermediate claim 9. Claim 10 has also been amended to use the phrase "adapted to" as suggested by the Examiner. Dependent claim 11

was amended to change the dependency of the claim from claim 8 to allowable claim 10.

Allowable claim 15 has been rewritten in independent form to incorporate subject matter from base claim 12 and intermediate claim 14. The Examiner made no other objection to claim 15. Dependent claim 13 was amended to change the dependency of the claim from claim 12 to allowable claim 15.

Allowable independent claim 16 and dependent claim 17 were not rejected by the Examiner on any basis. Likewise, independent claim 18 was not rejected by the Examiner on any basis. Accordingly, no amendments have been made to these claims.

Allowable claim 19 was rewritten in independent form to incorporate subject matter of base claim 1. Claim 19 was also amended to include the "adapted to" language suggested by the Examiner for claim 1. Allowable claims 20-25 are directly or indirectly dependent from claim 19.

Allowable claim 26 was rewritten in independent form to incorporate subject matter of base claim 1 and intermediate claim 5. Claim 26 was also amended to include the "adapted to" language suggested by the Examiner for base claim 1. In addition claim 26 was amended to replace the term "securable" with the term "secured" as suggested by the Examiner. Allowable claims 27 and 28 are dependent from claim 26. Claim 28 was amended to include the "adapted to" language suggested by the Examiner.

Allowable claim 29 and allowable claim 31 were each rewritten in independent form to incorporate subject matter of base claim 8. Claims 29 and 31 were each amended to include the "adapted to" language suggested by the Examiner for base claim 8. Allowable claim 30 is dependent from claim 29.

Dependent claims 32-34 are each dependent from allowable claim 10 which was rewritten into independent form. Accordingly, these claims have not been amended.

Allowable claims 35, 37 and 38 were each rewritten in independent form to incorporate subject matter from base claim 12. Claim 36 is dependent from claim 35. Other than a provisional double patenting rejection, claims 35-37 were not

rejected on any other basis by the Examiner. Allowable claim 38 was amended to quantify a density reduction as requested by the Examiner.

Allowable independent claim 42 was amended to use the term "adapted to" as suggested by the Examiner. The Examiner did not raise any other objection to claim 42. Dependent claims 43 and 45 are dependent from allowable independent claim 42. Claims 43 and 45 were amended to change the term "locatable" to "located" as suggested by the Examiner. Claims 44 and 46 are dependent on claims 43 and 45 respectively. The Examiner did not raise any other objection to claims 43-46.

Allowable claims 47-49 were not rejected by the Examiner on any basis except for a provisional double patenting rejection relative to claim 47. Consequently, these claims have not been amended.

Rejections Under 35 U.S.C. §112

The Examiner has rejected claims 1, 7, 8, 28, and 42 under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The Examiner suggested the use of the phrase "adapted to" to avoid inadvertently claiming parts of the body. Claims 7, 28 and 42 have been amended according to the Examiner's suggestion. Since subject matter of claim 1 has been incorporated into claims 2, 4, 19, and 26, each of claims 2, 4, 19, and 26 have also been amended according to the Examiner's suggestion. Also, since claim 8 has been incorporated into claims 10, 29, and 31, each of claims 10, 29, and 31 have been amended according to the Examiner's suggestion.

The Examiner also rejected claim 1 under 35 U.S.C. §112 because "the reduced pressure supply means is connected to a source of suction but is not positively connected to the rest of the device." Since claim 1 has been incorporated into claims 2, 4, 19, and 26, each of claims 2, 4, 19, and 26 have been amended to recite "said reduced pressure supply means cooperating with said cover." Support for this addition can

be found throughout the specification, for example, at page 15, lines 14-18; page 21, lines 22-26; and page 25, lines 23-26.

Claims 2, 26, 43, and 45 were rejected by the Examiner under 35 U.S.C. §112 on the basis that the use of "locatable" and "securable" is indefinite in that "it is unclear whether the elements are located or secured or not." Claims 2, 43, and 46 have been amended to recite "located" and claim 26 has been amended to recite "secured". Support for these changes can be found at page 15, lines 5-9; page 20, lines 22-25; page 22, lines 29-35; page 23, line 34- page 24, line 3; page 24, lines 24-29; and Figs. 5 and 6.

Claim 5 was rejected by the Examiner under 35 U.S.C. §112 on the basis that it is "unclear what the cover is protecting the wound from impact of, i.e. what is impacting." Since claim 5 has been incorporated into claim 26, claim 26 has been amended to recite that "said cover is sufficiently rigid to support the cover out of contact with the wound." Support for this amendment can be found in the specification at page 21, lines 19-22.

The Examiner rejected claim 38 under 35 U.S.C. §112 on the basis that it is "unclear what the limitation of 'a reduction' are." Specifically, the Examiner stated that it was unclear about how much of a reduction was being claimed. Claim 38 has been amended to recite that "said selected stage of healing is a reduction in bacterial density in the wound of at least 50%." Support for this addition can be found in the specification at page 28, lines 8-9.

The Examiner also rejected claim 39 under 35 U.S.C. §112. Claim 39 has been canceled without prejudice.

Claims 1, 8-10, 19, 24, and 29-34 were rejected by the Examiner under 35 U.S.C. §112 as "incomplete since the claims fail to define anything such as a screen or foam from keeping the cover from contacting the wound." Applicants submit that a foam or screen is not essential to the practice of the invention in all instances or embodiments of the invention.

The omission of elements from a claimed embodiment does not violate 35 U.S.C. §112, because an applicant is normally

entitled to sub-combination claims as well as claims to the entire combination. In re Fahrni, 117 U.S.P.Q. 199 (P.T.O. Bd. of App. 1958). Indeed, the use of the term "comprising" in a claim means that the recited elements are only part of a device defined in the specification; omission from a claim of some elements of the device defined in the specification makes the claim broad but not vague, indefinite, or misdescriptive. In re Schaefer, 171 U.S.P.Q. 110 (P.T.O. Bd. of App. 1970).

Had Applicants asserted that the use of foam or a screen was absolutely essential to the practice of Applicants' invention, then the Examiner might be justified in requiring such elements to be included in the claims. See, e.g., In re Leonard and Brandes, 187 U.S.P.Q. 122, 123 (P.T.O. Bd. of App. 1974). However, in determining whether an unclaimed feature is critical, the entire disclosure must be considered; broad language in the disclosure omitting an allegedly critical feature tends to rebut any argument of criticality. In re Goffe, 191 U.S.P.Q. 429, 432 (C.C.P.A. 1976).

In the present case, there is clear support in the disclosure for the omission of the foam or screen. On page 20, lines 15-17 it states that "an optional screen 50 for preventing overgrowth of the wound 74 may be positioned to overlies the wound 74." In addition, on page 21, lines 14-16 an embodiment of the present invention is described "without any screen either in the wound or overlying the wound." An example of an embodiment of the present invention without foam or a screen is even specifically depicted in Fig. 3.

Accordingly, there are instances where omission of the foam or screen is preferable. On page 20, lines 15-17 of the specification, it is stated:

"An optional screen 50 for preventing overgrowth of the wound 74 may be positioned to overlies the wound 74." (emphasis added.)

As is made readily apparent from the above description, use of a screen is not absolutely necessary if the practitioner has decided that prevention of overgrowth of the wound is not needed or desired in a specific application.

Applicants have not only disclosed that the use of a

screen is optional but applicants have specifically shown an embodiment in Fig. 3 where a screen is not used. Since the use of foam or a screen is not essential, the Examiner's rejection of claims 1, 8-10, 19, 24, and 29-34 should be withdrawn.

Provisional Double Patenting Rejections


It has been noted by Applicant that the Examiner has provisionally rejected claims 2-4, 35-37, and 47 as being provisionally unpatentable over claims in Applicant's copending U.S. patent application. Applicants appreciate the Examiner's notification of this potential rejection. However, the copending application has not yet issued as a patent. Accordingly, applicants will respond to this issue at the appropriate time.

In light of the foregoing, it is believed that all of the pending claims are in condition for allowance. Early and favorable action is respectfully requested.

Respectfully submitted,

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REQUEST FOR EXTENSION OF TIME IS GRANTED
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